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July 18, 2016

Hon. Denise L. Cote
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, No. 06 Civ. 2860 (DLC)

Dear Judge Cote:

As the Court is aware, I retired from my partnership at Debevoise & Plimpton LLP in March of this year. I write to confirm to the Court and the parties my intent to resign as Monitor on or before August 10, 2016, which will mark my seventh anniversary as Monitor of the Consent Decree entered in the above-entitled action. I understand that, pursuant to Paragraphs 9 and 11 of the Consent Decree, the Government is evaluating candidates to replace me. I believe that, in relatively short order, the Department of Justice will consult with the County and thereafter submit a candidate for the Court's review and approval. Between now and August 10, I will work diligently to complete the tasks identified in the hearing of July 8. I am committed to coordinating with the new Monitor so that the transition is as seamless as possible.

Over the last two months, following the submission of two reports by the Monitor and extensive argument by the parties, the Court found that the County breached the following two paragraphs of the Consent Decree: Paragraph 33(c), which requires the County to "create, fund and implement" an adequate public education campaign; and Paragraph 32, which requires the County to develop an Analysis of Impediments to Fair Housing ("AI") acceptable to HUD. The Court ordered remediation plans that will take months, if not years, to implement. The Government has the right to argue for an extension of the Consent Decree until such time as full compliance with the Consent Decree is achieved. Accordingly, the new Monitor should recognize that the assignment may extend for months, if not years, beyond the end of this year.

There is little question that the Monitor succeeding me will have the opportunity to meet with advocates, citizens, and officials from across the County. Taking advantage of that opportunity will put him or her in a better position to evaluate compliance and witness best efforts to achieve the goals of the Consent Decree and, should they arise, half-hearted ones.

I encourage the next Monitor to read both of the extraordinary submissions of the Interfaith Clergy for Social Action. In their first submission, the clergy make vivid the reality of the families and individuals who benefit from affordable housing. In their second, the clergy

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make clear the compelling reasons for speaking with clarity and accuracy about the need for affordable housing. They also give powerful voice to the idea that leaders should use words to summon the best of the community rather than the opposite.

The new Monitor may also consider closely examining the incentive structure imbedded in the Consent Decree and its impact on County behavior. Although the County was required to pay the costs and fees of the Monitor and experts working with him, those fees were subject to a cap. As a result, the County did not have to bear the full brunt of the costs of investigating and reporting on issues such as the following: (1) whether vetoing source-of-income legislation is consistent with promoting such legislation; (2) whether the false assertion that the Consent Decree would cost a billion dollars to implement was consistent with a public education campaign to promote “broad support for fair housing”; or (3) whether HUD should accept an AI that relied on “inaccurate data [and] flawed analysis concerning whether zoning laws within the County were exclusionary.” Opinion & Order, at 8, June 27, 2016, ECF No. 633 (quoting *Cnty. of Westchester v. U.S. Dep’t of Hous. & Urban Dev.*, 802 F.3d 413, 425 (2d Cir. 2015)).

The fact that the County’s tactical choices might be different if the County also bore the full cost of such tactical choices was made clear in the July 8 hearing. Following the Court’s order directing the hiring of a consultant to discharge the County’s duty of completing an AI, the County sought leave to appeal the order on an expedited basis. Counsel for the County then indicated that he did not have authority to agree to participate in a process to find such a consultant. As the Court will recall, the County swiftly reversed its position when the Monitor made clear that the County should not only bear the costs of the Monitor’s effort in that regard, but the fees and costs should neither be discounted nor subject to a cap.

There is ample reason, therefore, to impose upon the County the commercial rates and reasonable costs of the successor Monitor. Economics make a difference and the incentives should be aligned to encourage compliance. The course of this matter may have taken a very different turn had the County been compelled to bear all or a significant portion of the fees, now in excess of 11 million dollars, borne by Debevoise. The new Monitor should consider an application, pursuant to Paragraph 17(b), requiring the County to pay the Monitor’s full costs and expenses, as opposed to having to pay only up to a cap of \$175,000 per year.

The new Monitor will also have the opportunity to consider, adapt, or refine an innovation employed over the last three years: the Community Design Initiative (“CDI”). CDI seeks to engage communities early in the life cycle of a new housing proposal for two reasons: to identify issues before they become roadblocks and to target opportunities before they are lost. Several communities are exploring the use of this approach and it holds promise for developing solutions to seemingly intractable problems, like those posed by groundwater and inadequate infrastructure.

At the July 8 hearing, the Court spoke powerfully to the idea that opportunities are likely to have been lost because of the County’s non-compliance. In human terms, that means that a young person of just ten when the Consent Decree was first entered may have missed the benefit of affordable housing in Westchester before graduating from high school. The halting pace of change may have also caused workers with long commutes into the County to have spent far more time on the road than with their loved ones. The remedial steps ordered by the Court are more likely to ensure that further time is not lost.

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The Monitor's effort has relied on the substantial financial commitment of Debevoise & Plimpton LLP and the work and insight of a team of talented lawyers, which currently includes counsel Erich Grosz, and associates Erol Gulay, Danielle Thorne, Matthew Mutino, and Michael McGregor. The team has also included former associates Noelle Grohmann, Jan Mensz, Noam Greenspan, and Stephanie Gal. The Debevoise team benefitted from the robust support of several consultants, including: Professor John Shapiro, Chairperson of the Graduate Center for Planning and the Environment, Pratt Institute, and his colleague, Brian Kintish, an independent urban planning consultant with over 27 years of experience; Carolyn B. Stevens, the former Mayor of Scarsdale and member of the executive committee of the League of Women Voters; Professor Vicki Bean, professor at the New York University School of Law and former director of the Furman Center for Real Estate and Urban Policy (and now Commissioner for the New York City Department of Housing Preservation and Development); Professor William Morrish, Professor of Urban Ecologies at Parson School of Design; Adam Lubinsky, Claire Weisz, and Layng Pew, Principals at WXY Studio, an urban design and planning firm; Rose Noonan, Executive Director of Housing Action Counsel; and Joan Arnold, Executive Director of Allied Community Enterprises.

It was an honor to have been appointed Monitor by the Court and a privilege to serve with this wise and public-spirited team.

Respectfully submitted,



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Monitor

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cc: Counsel of record (via ECF)